

made the Defendant think that he was the only person duty bound to provide accommodation for his mother, Defendant's counsel replied that the Defendant's mother was very close to him and that Defendant's brother and sisters had their own families to look after.

In reply, counsel for the Plaintiff said that he did not accept the figures given by the Defendant relating to his income but added that for these proceedings the Defendant's income was irrelevant. The matrimonial home was purchased for the Defendant's family and not for his mother. The Defendant's brother owned five houses in Merry Road and could easily provide accommodation for the mother.

After considering the submissions of both counsel and the facts as disclosed in the affidavits filed in these proceedings, I came to the conclusion that as the flat in question was purchased jointly by the Plaintiff and the Defendant as their matrimonial home for the benefit of the family, the court should not endorse the Defendant's action in compelling his wife and children by his cruelty to leave the flat and should not back up such action by ordering the Plaintiff to sell her share in the matrimonial home to the Defendant.

In my view, the Plaintiff and the two children of the marriage have a right to reside in the matrimonial home. The Defendant's mother has no claim on it. As the Plaintiff is prepared to refund to the Defendant whatever monies he had paid towards the purchase price of the matrimonial home, I consider it equitable in the circumstances of this case that the Defendant should be ordered to deliver up to the Plaintiff possession of the matrimonial home and to convey and transfer all his rights, powers and interests in the said property to the Plaintiff. I accordingly made the order referred to above and ordered the Defendant to pay the costs of these proceedings as well. I also ordered the Registrar to determine what amount was payable by the Plaintiff to the Defendant pursuant to item (b) of my order herein. The Defendant, if he wishes, can apply to court to vary the maintenance order made against him on April 11, 1980.

Order accordingly.

Solicitors: *Allen & Gledhill; Francis Khoo & Lim.*

CHING KWONG KUEN v. SOH SIEW YOKE SOH SIEW YOKE v. CHING KWONG KUEN

[A.C.J. (Chua J.) February 23, 1982]
[Singapore - District Court Appeal Nos. 2 & 3 of 1979]

Family Law - Marriage - Question of validity - Chinese couple performed simple ceremony - Lived together for 19 years and had 3 children - Whether magistrate erred in awarding maintenance - Whether there was a valid marriage.

Family Law - Maintenance - Whether there was a valid marriage.

Both the appellant (Ching) and the respondent (Soh) appealed against the magistrate's order ordering the appellant to pay the respondent \$1,500 per month maintenance to the respondent and \$1,000 per month for her daughter, Lena Ching.

The facts revealed that the respondent first met the appellant

A in 1957 when she was nineteen years old, and working in a bar. The respondent came from a family with humble background and the appellant from a rich and respectable family. At the end of 1958 they had sexual relations and he promised that he would marry her. Subsequently they lived together at her place in Geylang. The appellant kept putting off the subject of marriage until 1959, on the persistent promptings of the respondent's mother. On the 8th Moon in 1959, a simple ceremony was arranged and the appellant gave the respondent's mother \$1,000 towards the expenses for the wedding. The respondent then bought cakes and distributed to her mother's and her own friends. On the day of the wedding both the respondent and the appellant served tea to the respondent's mother who then gave them each a red packet. The couple served tea to the respondent's aunts and they burnt joss-sticks and worshipped the Goddess of Mercy. The ceremony was attended by twenty to thirty people.

B The respondent left the matrimonial home on May 26, 1977 after a violent quarrel with the appellant.

C The appellant at the hearing of the maintenance summons disputed that the respondent was ever his wife despite the fact that they had been living together for nineteen years and she bore him three children. The appellant did not give evidence.

D The issue before the court was what had to be proved to prove a Chinese customary marriage.

E Held: (1) as to the law, the magistrate had correctly stated the principles to be applied to the case. With regard to the facts there was ample evidence on which the magistrate could reach the conclusion which he did that the respondent and the appellant had gone through a ceremony of marriage, that they had lived openly as husband and wife and that there was a valid marriage existing between;

(2) the appeal of the respondent would be allowed. The magistrate had not given any reason why he ordered the maintenance to commence from April 1, 1978 when the summons was taken out on July 26, 1977. The respondent and her daughter would therefore be entitled to maintenance from June 1, 1977.

Cases referred to:-

- (1) *Cheang Thye Phin v. Tan Ah Loy* [1920] A.C. 369.
- (2) *Er Gek Cheng v. Ho Ying Seng* [1949] M.L.J. 171.
- (3) *Re Lee Siew Kow, deceased* [1952] M.L.J. 184.
- (4) *Tay Geok Yap & Ors. v. Tan Lian Cheow* [1965] 1 M.L.J. 102.

DISTRICT COURT APPEAL.

Loh Lin Kok for the appellant.

Charles N. Mendis for the respondent.

Cur. Adv. Vult.

H Chua J.: These two appeals arise from a maintenance summons No. 823 of 1977 taken by Soh Siew Yoke (Respondent) against Ching Kwong Kuen (Appellant) in the Magistrate's Court applying for maintenance for herself and her daughter Lena Ching. The Magistrate ordered the Appellant to pay \$1500 per month maintenance to the Respondent and \$1000 per month maintenance for Lena Ching with effect from the 1st April, 1978.

I The Appellant now appeals against the decision and order of the Magistrate ordering him to pay \$1500 p.m. maintenance to the Respondent (District Court Appeal No. 2 of 1979) and the Respondent now appeals against the order of the Magistrate ordering that the maintenance for her commenced on the 1st April, 1978, (District Court Appeal No. 3 of 1979).

The short facts are these. The Respondent came from a family with humble background and the Appellant from a rich and respectable family. The Respondent first met the Appellant sometime in 1957 when she was nineteen years

old and he was also young and unmarried. She was then working at Odeon Bar. Thereafter the Appellant visited her everyday at her working place. She left Odeon Bar and worked at Tong Ah Bar and the Appellant continued to visit her everyday. They fell in love and they had sexual relationship at the end of 1958 after he promised her that he would marry her. He also asked her to stop working at the bar and promised her that he would provide her with all her expenditures. After that they lived together in her place in Geylang, although he did not stay with her every night because sometimes he had to work on board the ships.

She brought up the subject of marriage and reminded him time and again of his promise to marry her. But he said that his mother was very conservative and that she had high blood pressure and that he did not want to offend her. He also explained that he had to let his elder brother get married first before he could marry her. She believed him.

In the early part of 1959 she moved to 11 Pang Seng Road and they were still living together. Subsequently her mother came to know about this and she insisted that they should get married otherwise it would be very embarrassing if their friends knew that they were living together without being married. The mother also insisted that if they did not get married then the Respondent should not continue her relationship with the Appellant. The mother asked the Respondent to pass on her message to the Appellant and requested him to see her to discuss the matter. The Respondent informed the Appellant of her mother's decision and finally a meeting was arranged for the Appellant to discuss the matter. The Appellant accepted the mother's proposal and promised to marry the Respondent. He also explained that he would break the news to his mother slowly because he was afraid that she might object to their marriage.

Eventually a simple ceremony was arranged in the 8th Moon, 1959, and the Appellant gave the Respondent's mother \$1000.00 towards the expenses for the wedding. The Respondent then bought cakes and distributed to her mother's and her own friends.

On the day of the wedding both the Respondent and the Appellant served tea to the Respondent's mother who then gave them each a red packet. The Respondent's mother also gave the Appellant a piece of cloth for him to make trousers. The Respondent and the Appellant also served tea to the Respondent's aunts. They also burnt joss-sticks and worshipped the Goddess of Mercy. The ceremony was attended by twenty to thirty people comprising of Respondent's mother's relatives and friends and her own friends. That night the Appellant took the Respondent to a studio to take a photograph but it had been torn by the Appellant during a quarrel in 1960 or 1961.

The Respondent left the matrimonial home on the May 26, 1977, after a violent quarrel with the Appellant.

The Appellant at the hearing of the maintenance summons disputed that the Respondent was ever his wife despite the fact that they had been living together for nineteen years and she bore him three children. The Appellant did not give evidence.

The first question which the Magistrate had to decide was, "Is there a valid marriage existing between the Respondent and the Appellant?" and he held that there was. It is

A submitted by counsel for the Appellant that the Magistrate is wrong.

The main complaint of the Appellant is that the Magistrate was wrong in holding that the Respondent and the Appellant had performed the necessary ceremonies required in a Chinese customary marriage when the clear and uncontroverted evidence of Lee Siow Mong (called by the Appellant as an expert on Chinese customary marriage) that the so-called Chinese customary marriage averred to in this case by the Respondent and her witnesses, especially the fact that it was completely one-sided, was not a Chinese customary marriage.

The issue raised in this appeal is a question of law. What has to be proved to prove a Chinese customary marriage?

There have been many cases of this kind in our courts and the law by this time is settled.

It was held by the Privy Council in *Cheang Thye Phin v. Tan Ah Loy*⁽¹⁾ that, although some sort of ceremony is usual when a secondary wife is taken, a ceremony is not essential to constitute a secondary wife.

In *Er Gek Cheng v. Ho Ying Seng*⁽²⁾ Murray-Aynsley C.J. said (at p. 172):

"The courts have decided that any male Chinese not a Christian domiciled in the Colony can have an unlimited number of t'sips. The status of a t'sip has its origin in contract. That is, it is simply consensual. No formalities are necessary. The only requirements of this and other Chinese marriages are that the personal status of both parties is such that they can legally enter into such a contract... The legal requirements for marriage with a t'sai and a t'sip are, I think, the same. This means that the law of this Colony merely requires a consensual marriage, that is, an agreement to form a relationship that comes within the English definition of marriage. It is no longer any part of that conception that such a relationship must be life-long. It merely means one of the indefinite duration as distinct from one for a definite period as is allowed among Moslems."

He further said (at p. 173):

"In the case of Chinese marriages, in most cases, the ceremonies regarded as essential at the time of the *Six Widows Case* (12 S.S.L.R. 120) have disappeared and there remains a simple form of consensual marriage, quite in conformity with the requirements of the Canon Law.

G Therefore, if we adopt this conception we have a rational doctrine which can be applied in all cases which have not been especially provided for by statute.

H With these simple legal requirements the difficulties that have troubled the courts have been merely questions of evidence. The burden of proof is upon whoever alleges the status of t'sip to have existed. What must be proved in order to discharge that burden? In most cases there is some sort of a ceremony, and there is recognition of the t'sip as a member of the husband's family. But this is evidentiary only. It is not essential to the acquisition of the status of t'sip. A formal contract in writing would be conclusive. If the parties were to live as such publicly so as to acquire the reputation of being man and t'sip that would also be evidence that the status had been acquired. On the other hand, I do not consider that mere cohabitation for a considerable period would by itself be sufficient evidence."

I In *Re Lee Siew Kow, deceased*⁽³⁾ the Singapore Court of Appeal was comprised of Murray-Aynsley C.J. (Singapore), Mathew C.J. (Federation of Malaya) and Brown J. Mathew C.J. and Brown J. both expressly approved the decision of Murray-Aynsley C.J. in *Er Gek Cheng's case* (*supra*).

In *Tay Geok Yap & Ors. v. Tan Lian Cheow*⁽⁴⁾ the

Federal Court (comprising of Wee Chong Jin, C.J. (Singapore), Wylie, C.J. (Borneo) and Tan Ah Tah F.J.), after reviewing a long line of cases, was in entire agreement with the judgment of Murray-Aynsley C.J. in *Er Gek Cheng's case*.

Counsel for the Appellant says that any holding out of the Respondent as a wife was after 1968, and that was after the coming into force of the Women's Charter by which no marriage is valid unless registered. Counsel submits that after 1967 (when the Women's Charter was amended) the concept of presumption of marriage by an intention to form a permanent union, by repute, or by long cohabitation, has been done away with. I see no substance in this submission.

As to the law, the Magistrate has, in my opinion, correctly stated the principles to be applied to the case. With regard to the facts there was ample evidence on which the Magistrate could reach the conclusions which he did that the Respondent and the Appellant had gone through a ceremony of marriage, that they had lived openly as husband and wife and that they intended to form a permanent union as husband and wife and that there is a valid marriage existing between them.

The Appellant contended before the Magistrate that, if the Respondent was his wife, he was not liable to maintain her because she had left the matrimonial home unjustifiably. The Magistrate after having considered the evidence was satisfied that the Respondent was justified in leaving the matrimonial home. The Appellant submits that the Magistrate has erred in this finding.

The Magistrate said in his Grounds of Judgment:

"In fact it would not be unfair to say that she was forced to leave by the Respondent's (Appellant's) acts and conduct. She did not refuse to reside in the matrimonial home. The Respondent (Appellant) had made life at home intolerable for her to stay. Though this is not a charge of cruelty under section 62 (1) of the Women's Charter, chapter 47, however the evidence showed that the acts and conduct of the Respondent (Appellant) had been such a character that she was reasonably justified in continuing to live apart from the Respondent (Appellant)."

The Appellant did not give any evidence. The Magistrate had considered carefully the evidence that was adduced before him. The Appellant has not persuaded me that the Magistrate was wrong in his decision that the Respondent was justified in leaving the matrimonial home.

The Appellant complains that the Magistrate was wrong in awarding the sum of \$1500 per month maintenance to the Respondent. The Appellant says that the Magistrate had acted on very flimsy evidence and that the Magistrate failed to consider or sufficiently consider the fact that the Respondent was exaggerating her figures of expenditure. There is no substance in this complaint. The Appellant did not give any evidence as to his means. He should have if he thought that the demand of the Respondent was excessive. I see no good reason to interfere with the decision of the Magistrate.

In the result the appeal of the Appellant is dismissed with costs.

I now come to deal with the appeal of the Respondent (District Court Appeal No. 3 of 1979).

The Respondent says that the Magistrate, having decided that the Respondent had justifiably left the matri-

monial home on May 27, 1977, erred when he ordered the payment of the maintenance to commence on April 1, 1978. The Respondent submits that the payment should commence on May 27, 1977. The Respondent says that the order has deprived her the right of maintenance for herself and to reimbursement of maintenance she had to incur for the maintenance of her daughter Lena Ching for the period May 27, 1977, to April 1, 1978, when she and her daughter were not provided with maintenance by the Appellant.

The Magistrate has not given any reason why he ordered the maintenance to commence from April 1, 1978. The Maintenance Summons was taken out on July 26, 1977. Hearing commenced on November 28, 1977. The case lasted thirteen days and was concluded on April 28, 1978. It was strenuously resisted by the Appellant. It seems to me unreasonable that maintenance should commence some ten months after the Appellant ceased to maintain the Respondent and her daughter when the Respondent took immediate steps to apply for maintenance.

The appeal of the Respondent is allowed with costs. I order that the maintenance for the Respondent and her daughter commence from June 1, 1977.

*Appellant's Appeal Dismissed.
Respondent's Appeal Allowed.*

Solicitors: *Loh Lin Kok; Charles N. Mendis.*

TAN KENG KOH v. CHAN KAI KAH & ANOR.

[A.C.J. (Rajah J.) March 5, 1982]

[Singapore - District Court Appeal No. 17 of 1981]

Landlord & Tenant - Claim for possession of premises - Whether rent-controlled - Burden on landlord to prove premises not rent-controlled - Control of Rent Act (Cap. 266).

The plaintiffs/respondents purchased the land and premises at No. 215-D Balestier Road. They claimed for possession of the said premises from the defendant. The defendant relied on the provisions of the Control of Rent Act (Cap. 266) and claimed protection under it. The learned trial judge gave judgment for the plaintiffs. The defendant appealed.

Held, allowing the appeal: the learned trial judge had not addressed his mind to the question of proof in such proceedings being on the plaintiffs (landlords) and not on the defendant (tenant).

Editorial Note: The plaintiffs have appealed against the above judgment.

Case referred to:

(1) *Dadhi Ral Yado v. Mukat Rai* [1958] M.L.J. 193.

DISTRICT COURT APPEAL.

Mohan Bachoo Singh for the appellant/defendant.
Ng Wing Cheong for the respondents/plaintiffs.

Cur. Adv. Vult.

Rajah J.: The Plaintiffs in District Court Summons No. 1933 of 1980, who are the Respondents in this appeal,